IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2355 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHWIN D PATEL SON OF LATE D.D.PATEL - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :
MR MP SHAH for Petitioner(s):1, MS KRUTI M SHAH for Petitioner(s):1,
RULE SERVED for Respondent(s) : 1,
MR RAVI KARNAVAT for Respondent(s) : 2,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 01/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner-Ashwin D. Patel, son of late Shri Dhirajlal D. Patel, Ex-ESM, Western Railway, Bhavnagar, has filed this petition under Articles 226 and 227 of the Constitution of India and prayed that the impugned judgment and order dated 20.1.2004 passed by the learned Central Administrative Tribunal, Ahmedabad Bench (for short “the Tribunal”) in O.A. No.387 of 2003 with M.A. No.525 of 2003 be quashed and set aside and the respondents be directed to reconsider the case of the petitioner for appointment on compassionate ground.

Shri Dhirajlal D. Patel, Ex-ESM expired on 31.5.1975 while on duty, leaving behind him, his widow-Smt.Durgaben and 3 sons; (1) Pankaj, (2) Bakul, and (3) Ashwin (present petitioner). As per the practice, Pankaj, the eldest son of of Shri Dhirajlal D. Patel was offered service in Railways on the post of Probationary Assistant Station Master in 1978. Some how or the other, he did not join that post, which is clear from letter dated 29.7.2002 (Annexure-E) addressed by the present petitioner-Ashwin to DRM, Bhavnagar. It is no doubt true that by letter dated 25.11.1978 said Shri Pankaj requested to give him posting on Electrical Engineering side. But, the fact remains that he was not offered such posting and that he did not join the post which was offered to him.

It appears that thereafter Smt.Durgaben, widow of deceased-Shri Dhirajlal submitted an application dated 12.9.1979 for giving appointment to her second son-Bakunchandra Patel. However, no response was given to it by the Railway administration, may be because her eldest son who was offered appointment refused to accept it.

As submitted by Ms.Shah for the petitioner that thereafter Smt.Durgaben sent two reminders dated 2.6.1980 and 21.4.1981 respectively, but they were also not responded. On the present petitioner-Ashwin attaining majority, his widow mother Smt.Durgaben submitted an application dated 17.1.1985 and prayed that her third son Ashwin be appointed on compassionate ground. The same also remained un-replied. After waiting for a period of almost 17 years, it appears that another application dated 18.10.2002 was submitted for giving appointment to her third son, Ashwin on compassionate ground which was rejected by the respondent on 30.8.2002 on the ground that it was hopelessly time barred.

For the first time, the present petitioner-Ashwin approached the Tribunal by way of O.A. No.387 of 2003, which was time barred, therefore, M.A. No.525 of 2003 was filed in it for condoning delay. Learned Tribunal rejected the application on the ground of gross delay and laches of 28 years and also on merits, by its impugned judgment and order dated 20.1.2004 (Annexure-L). Hence, this petition.

Ms.Shah for the petitioner submitted that the learned Tribunal committed grave error in rejecting the application of the applicant-petitioner on the ground of delay and laches. She submitted that by approaching the Tribunal late, no approved right of any person was breached by the original applicant as the original applicant was seeking appointment on compassionate ground. Therefore, the learned Tribunal ought not to have rejected the application on the technical ground of delay and laches. There is no substance in this submission. The learned Tribunal was absolutely right in dismissing the application on the ground of gross delay of 28 years as in this case, Shri Dhirajlal Patel, father of the present petitioner-applicant expired long back i.e. on 31.5.1975 and for seeking appointment on compassionate ground the petitioner for the first time approached the learned Tribunal in 2003 i.e. after a period of 28 years.

Under the circumstances, without going into the merits of the case, this petition was required to be dismissed. However, we are of the considered opinion that even on merits also, the petitioner has no case for more then one reasons. In the instant case, on the death of Shri Dhirajlal Patel, his eldest son-Pankaj was offered appointment on the post of Probationary Assistant Station Master, which was refused by him as he wanted appointment in Electrical Engineering side. Offer can be made for appointment

on compassionate ground to only one member of the deceased.

After a period of one year of refusal by Pankaj, his widow mother, Smt.Durgaben applied on 12.9.1979 for giving appointment to her second son-Bakulk. Thereafter, after sending two reminders in 1980 and 1981 she did nothing and as soon as her third son-Ashwin-petitioner attained majority, on 17.1.1985 she once again applied for appointment of her third son-Ashwin on compassionate ground. Thereafter, she waited for more than 17 years and sent another application on 18.10.2002 for appointment of her third son-Ashwin on compassionate ground and the said application was rejected on the ground of delay by the respondent authorities on 30.8.2002.

The very fact that after the death of Shri Dhirajlal Patel, his family consisting of his widow and three sons survived for more than 28 years itself shows that they were not in real need of employment. The appointment on compassionate ground is to be made as early as possible with a view to see that on the death of an employee his family may not suffer in harness.

Under the circumstances, when the Authority refused appointment on the ground of delay of more than 28 years and that the learned Tribunal has also refused to exercise its discretion in favour of the petitioner-applicant, then certainly this court would

not like to interfere with such orders in its supervisory jurisdiction under Article 227 of the Constitution of India, the scope of which is very narrow and limited. It may be stated that though the petition is labelled both as petition under Articles 226 and 227 of the Constitution of India, strictly speaking it is a petition under Article 227 of the Constitution of India and in absence of any jurisdictional error committed by the learned Tribunal, we would not like to interfere with such orders in its supervisory jurisdiction.

In view of the above discussion, this petition fails and is hereby dismissed. Rule discharged. However, there shall be no order as to costs.

(B.J.SHETHNA, J.)

(M.D.SHAH, J.)

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